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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PENDLETON DIVISION

OREGON FIREARMS FEDERATION, INC.,
et al.,

Plaintiffs,

v.

TINA KOTEK, et al.,

Defendants.

MARK FITZ, et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM, et al.,

Defendants.

KATERINA B. EYRE, et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM, et al.,

Defendants.

DANIEL AZZOPARDI, et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM, et al.,

Defendants.

Case No. 2:22-cv-01815-IM (*Lead Case*)
Case No. 3:22-cv-01859-IM (*Trailing Case*)
Case No. 3:22-cv-01862-IM (*Trailing Case*)
Case No. 3:22-cv-01869-IM (*Trailing Case*)

CONSOLIDATED CASES

PLAINTIFFS' WITNESS LIST

Plaintiffs are continuing to confer with Defendants regarding stipulations that may narrow the trial testimony of Plaintiffs' witnesses or avoid the need to call certain witnesses. Based on the current stipulations reached with Defendants, Plaintiffs need to call the witnesses listed below to testify at trial in the above-captioned matter. Plaintiffs reserve the right to offer other witnesses on rebuttal or for impeachment purposes.

1. Katie Eyre (Plaintiff), Fact Witness

Eyre will testify:

- Eyre is a resident of Washington County, Oregon. She is a law-abiding, responsible citizen who is not prohibited from purchasing firearms.
- Before Measure 114 took effect, Eyre was in the process of obtaining a concealed handgun license ("CHL") in Oregon.
- Before Measure 114 took effect, Eyre purchased magazines capable of holding more than 10 rounds of ammunition for the semi-automatic pistol she owns.
- Eyre currently possesses one or more firearm magazines capable of accepting more than 10 rounds of ammunition.
- Eyre owns magazines prohibited by Measure 114 for self-defense and other lawful purposes.
- But for Measure 114, Eyre would acquire more magazines capable of holding more than 10 rounds of ammunition.

Eyre will be prepared to testify regarding her experience with self-defense; her use, possession, and acquisition of firearms; and her experience with firearm background checks in Oregon.

2. Tim Freeman (Plaintiff), Fact Witness

Freeman will testify:

- Freeman is a resident of Douglas County, Oregon. He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms.
- Freeman has held a CHL in Oregon since 1995.
- Before Measure 114 took effect, Mr. Freeman purchased magazines capable of holding more than 10 rounds of ammunition for the semi-automatic firearms he owns.
- Freeman currently possesses one or more firearm magazine capable of accepting more than 10 rounds of ammunition.
- Freeman owns magazines prohibited by Measure 114 for self-defense and other lawful purposes.
- But for Measure 114, Freeman would acquire more magazines capable of holding more than 10 rounds of ammunition.

Freeman will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon.

3. Adam Braatz (for Plaintiff Mazama Sporting Goods), Fact Witness

Adam Braatz is a member of Plaintiff Sitatunga Services LLC, dba Mazama Sporting Goods (“Mazama”). On behalf of Mazama, Braatz will testify:

- Plaintiff Mazama is a family-owned sporting goods store that sells firearms, fishing gear, and related products, including ammunition and magazines, located in Eugene, Oregon.
- Before Measure 114 took effect, Mazama possessed and sold ammunition feeding devices to the public that Measure 114 bans.

- As of the date Measure 114 was scheduled to take effect, Johnson possessed, and continues to possess, numerous firearm magazines capable of accepting more than 10 rounds of ammunition.
- But for Measure 114, Mazama would continue possessing and selling ammunition feeding devices to the public that Measure 114 bans.
- Mazama's business sales will be adversely impacted if and when Measure 114 is fully implemented.

Braatz will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon. Braatz will be prepared to testify regarding his firearms business; Mazama business records produced in discovery; Mazama's experience with Oregon firearm background checks; the effect of Measure 114 on his business; and his knowledge regarding firearms.

4. Salam Fatohi (for Plaintiff National Shooting Sports Foundation), Fact Witness

Salam Fatohi is an employee and director of research for Plaintiff National Shooting Sports Foundation ("NSSF"). On behalf of NSSF, he will testify:

- NSSF is a trade association for the firearm, ammunition, and hunting and shooting sports industry.
- NSSF has members in Oregon.

Fatohi will be prepared to testify regarding NSSF's business; NSSF's business records produced in discovery (including reports on Firearm Production in the United States); and the number and types of firearms and magazines owned and used by Americans.

5. Kerry Spurgin (for Plaintiffs Oregon State Shooting Association), Fact Witness

Spurgin is the President of Plaintiff Oregon State Shooting Association (“OSSA”). On behalf of OSSA, Mr. Spurgin will testify:

- OSSA is an Oregon not-for-profit corporation.
- OSSA’s organizational objectives include promoting, in every lawful way, all types of legal firearm activities in the State of Oregon; raising the general proficiency in the use of firearms; supporting the Second Amendment to the Constitution of the United States; educationally imparting to the citizens of good repute a better knowledge in the safe handling and proper care of firearms; encouraging the sport of competitive marksmanship and target shooting; and coordinating and encouraging efforts of member clubs and individuals in the field of firearm safety, marksmanship training and all types of recreational shooting.

Spurgin will be prepared to testify regarding OSSA’s business; OSSA’s business records produced in discovery; the types of firearms and magazines owned and used by Oregonians; and the experience of Oregonians with background checks for firearms.

6. Kevin Starrett (for Plaintiff Oregon Firearms Federation, Inc. (“OFF”)), Fact Witness

Kevin Starrett is the Executive Director of OFF. He will testify:

- Starrett is an adult over the age of twenty-one and resident of the State of Oregon, Clackamas County.
- He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms.
- Starrett owns magazines prohibited by Measure 114 for self-defense and other lawful purposes.

- But for Oregon's restrictions on magazines over 10 rounds and his reasonable fear of criminal prosecution for violating them, Starrett would continually possess a magazine over 10 rounds in Oregon for lawful purposes, including in-home and outside self-defense. Starrett will testify that he is a certified NRA firearms instructor.
- Plaintiff OFF is an Oregon public benefit corporation. OFF seeks to defend the civil rights of all law-abiding individuals including the fundamental right to acquire and possess commonly used firearm magazines.

Starrett will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon. Starrett will be prepared to testify regarding OFF's business; OFF's business records produced in discovery; the types of firearms and magazines owned and used by Oregonians; and the experience of Oregonians with background checks for firearms.

7. Adam Johnson (Plaintiff), Fact Witness

Johnson will testify:

- He is an adult over the age of twenty-one and resident of the State of Oregon, Marion County.
- He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms. Johnson is a licensed federal firearms licensee (FFL) by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).
- As of the date Measure 114 was scheduled to take effect, Johnson possessed, and continues to do so, numerous firearm magazines capable of accepting more than 10 rounds of ammunition.

- But for Oregon's restrictions on magazines over 10 rounds, and Johnson's reasonable fear of criminal prosecution for violating them, Johnson would continually possess magazines over 10 rounds in Oregon for lawful purposes, including in-home, outside self-defense and training of law enforcement personnel and civilians.
- Johnson owns Coat of Arms Custom Firearms, a retail firearms and accessory store in Keizer, Oregon.
- Coat of Arms sells firearms to the residence of Oregon that utilizes magazines that hold more than ten rounds of ammunition.
- Coat of Arms also sells magazines to the public that hold more than ten rounds of ammunition.
- His business sales will be adversely impacted if and when Measure 114 is fully implemented.
- He has had to fire more than ten round of ammunition in self-defense.

Johnson will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon. Johnson will be prepared to testify regarding his firearms business; Coat of Arms business records produced in discovery; Coat of Arm's experience with Oregon firearm background checks; the effect of Measure 114 on his business; and his knowledge regarding firearms.

8. Harold Richard Haden (Plaintiff), Fact Witness

Haden will testify:

- He is an adult over the age of twenty-one and resident of the State of Oregon, Umatilla County. He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms.
- Haden is a licensed federal firearms licensee (FFL) by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).
- As of the date Measure 114 was scheduled to take effect, Haden possessed, and continues to do so, numerous firearm magazines capable of accepting more than 10 rounds of ammunition.
- But for Oregon's restrictions on magazines over 10 rounds, and Johnson's reasonable fear of criminal prosecution for violating them, Johnson would continually possess magazines over 10 rounds in Oregon for lawful purposes, including in-home, and outside self-defense.
- Haden owns Garner's Sporting Goods, located in Pendleton, Oregon.
- Garner's sells firearms to the residence of Oregon that utilizes magazines that hold more than ten rounds of ammunition.
- Garner's also sells magazines to the public that hold more than ten rounds of ammunition.
- Haden will testify that his business sales will be adversely impacted if and when Measure 114 is fully implemented.

Haden will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon. Haden will be prepared to testify regarding his firearms business; Garner's business records produced in

discovery; Garner's experience with Oregon firearm background checks; the effect of Measure 114 on his business; and his knowledge regarding firearms.

9. Damian Bunting (Plaintiff), Fact Witness

Bunting will testify:

- He is an adult over the age of twenty-one and resident of the State of Oregon, Multnomah County. He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms.
- Bunting is certified by the Oregon Department of Public Safety Standards and Training (DPSST) under the Armed Private Security program.
- He has received firearms training certified by DPSST. Bunting is the owner of Security Guard Training Academy LLC. He works as an armed security guard.
- Bunting owns magazines prohibited by Measure 114 for self-defense, for other lawful purposes and daily while working as an armed private security officer.
- But for Oregon's restrictions on magazines over 10 rounds and his reasonable fear of criminal prosecution for violating them, Bunting would continually possess a magazine over 10 rounds in Oregon for lawful purposes, including in-home and outside self-defense, and for the defense of the clients he works for as a security officer.

Bunting will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon.

10. Sheriff Brad Lohrey (Plaintiff), Fact Witness

Sheriff will testify:

- He is an adult over the age of twenty-one and resident of the State of Oregon, Sherman County and Sheriff of Sherman County. He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms.
- Lohrey owns magazines prohibited by Measure 114 for self-defense and other lawful purposes.
- But for Oregon's restrictions on magazines over 10 rounds and his reasonable fear of criminal prosecution for violating them, Lohrey would continually possess a magazine over 10 rounds in his private life and off duty in Oregon for lawful purposes, including in-home and outside self-defense.
- Lohrey will further testify that he has been a law enforcement officer for 30 years and has been involved in many investigations of serious criminal offenses that have ultimately resulted in offenders being sentenced to prison/jail or otherwise punished. These offenders, their families, and/or their friends can sometimes be angry and seek retaliation against Lohrey for the part that he played in a given investigation.
- Lohrey will state that has received many death threats over the years. Lohrey will testify that he has also been physically confronted while off-duty.
- In Sherman County, many citizens know who Lohrey is, where he lives, and the places that he frequents. Lohrey will testify that he faces a very real and serious threat to personal safety because of the length of time spent as a law enforcement officer he plans on carrying a firearm with a magazine capacity of over ten rounds for personal self-defense.

Lohrey will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon.

11. Sheriff Cody Bowen (Plaintiff), Fact Witness

Sheriff Brown will testify:

- He is an adult over the age of twenty-one and resident of the State of Oregon, Union County and Sheriff of Union County. He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms.
- Bowen owns magazines prohibited by Measure 114 for self-defense and other lawful purposes.
- But for Oregon's restrictions on magazines over 10 rounds and his reasonable fear of criminal prosecution for violating them, Bowen would continually possess a magazine over 10 rounds in his private life and off duty in Oregon for lawful purposes, including in-home and outside self-defense.
- Bowen carries a firearm while he is off duty to protect himself and his family. He will testify that owns handguns with magazines that maximize the number bullets for the simple reason that it maximizes his capability to defend himself from a threat.
- If Bowen is forced to defend himself and his family, he wants to every possible advantage available to him to survive an encounter with a criminal. He wants the maximum number of bullets that can be feasibly included in his firearms in a single package, ready for use. Measure 114 would make Bowen a criminal for carrying the best available tools to protect himself and his family.

- Bowen has had to fire more than ten rounds of ammunition to protect himself against an attack by a bear.

Lohrey will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon.

12. Sheriff Terry Rowan (Plaintiff), Fact Witness

Sheriff Rowan will testify:

- He is an adult over the age of twenty-one and resident of the State of Oregon, Umatilla County and Sheriff of Umatilla County. He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms.
- Rowan owns magazines prohibited by Measure 114 for self-defense and other lawful purposes.
- But for Oregon's restrictions on magazines over 10 rounds and his reasonable fear of criminal prosecution for violating them, Rowan would continually possess a magazine over 10 rounds in his private life and off duty in Oregon for lawful purposes, including in-home and outside self-defense.
- He likes to hike, and he carries a handgun with more than 10 rounds to protect himself against wild animals such as cougars and bears that live in Umatilla County.
- He carries a handgun with more than 10 rounds when he is off-duty because he has received death threats over the years and has been physically confronted while off-duty. Many in the community know Rowan, where he lives, and places that he frequents. Someone wishing to do Rowan harm will know how to find him.

- Measure 114 would make Rowan a criminal for carrying the guns that he now owns off duty and would impair his ability to protect himself and his family.

Rowan will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon.

13. Sheriff Brian Pixley (Plaintiff), Fact Witness

Sheriff Pixley will testify:

- He is an adult over the age of twenty-one and resident of the State of Oregon, Columbia County and Sheriff of Columbia County. He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms.
- Pixley owns magazines prohibited by Measure 114 for self-defense and other lawful purposes.
- But for Oregon's restrictions on magazines over 10 rounds and his reasonable fear of criminal prosecution for violating them, Pixley would continually possess a magazine over 10 rounds in his private life and off duty in Oregon for lawful purposes, including in-home and outside self-defense.
- Pixley will testify that he has been a law enforcement officer for 20 years. Those persons sent to prison or other punishment sometimes seek to retaliate against Pixley. Many people in Columbia County know who Pixley is, where he lives, and the places that he frequents.
- Pixley will testify that he has received death threats and his family has been threatened due to the nature of his work. Pixley has also been confronted in person while off duty. Pixley will testify that he carries a firearm while he is off duty to protect himself and his family.
- Almost every magazine owned by him has a capacity of more than 10 rounds.

- Pixley is unaware of whether some of his firearms have an option to buy an unmodifiable magazine with a capacity of 10 rounds or less.
- Measure 114 would make him a criminal for carrying the guns that he now owns to protect himself and his family.

Pixley will be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon.

14. Wendy Landers (OSP), Fact Witness

15. Karen LeJeune (OSP), Fact Witness

16. Commander Rebecca David (OSP), Fact Witness

Wendy Landers and Karen LeJeune are employees of the Oregon State Police, and they were designated as Rule 30(b)(6) witnesses by Defendants. Commander Rebecca David is the Bureau Commander for the Public Safety Services Bureau of the Oregon State Police. Plaintiffs anticipate calling them as adverse witnesses and/or cross-examining them following Defendants' examination of them. Based on their depositions (Wendy Landers and Karen LeJeune) and declaration (Commander David), these witnesses can be expected to testify regarding:

- Background Check delays by the FICS Unit.
- FICS Unit procedures and operations.
- The effect of M114 on the FICS Unit personnel and procedures.
- FICS Unit personnel decisions.
- The understaffing and underfunding of the FICS unit.
- Creation, implementation, and application of the Permit to Purchase Program required by M114.

- The lack of funding for the Measure 114 program.
- Communications with the Federal Bureau of Investigations regarding background checks related to M114.
- The effect of M114 on the Oregon State Police personnel and procedures.
- Communications with Oregon County Sheriffs, including the Oregon State Sheriffs Association, regarding the creation, implementation, and application of the Permit to Purchase Program in Oregon counties.
- Business records of the Oregon State Police, produced in this matter.

17. Daniel Azzopardi (Plaintiff), Fact Witness

Mr. Azzopardi will testify that

- He is a resident of Yamhill County, Oregon
- He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms,
- He owns firearms equipped with a magazine in excess of ten rounds, regularly purchases firearms, and plans to purchase firearms in the future.

Azzopardi will also be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon.

18. Mark Fitz (Plaintiff), Fact Witness

Mr. Fitz will testify

- He is a resident of Clackamas County, Oregon
- He is a law-abiding, responsible citizen who is not prohibited from purchasing firearms,
- He owns a firearm equipped with a magazine in excess of ten rounds, and plans to purchase

additional magazines in the future.

- He is a member of Second Amendment Foundation, Inc. and Firearms Policy Coalition.

Fitz will also be prepared to testify regarding his experience with self-defense; his use, possession, and acquisition of firearms; and his experience with firearm background checks in Oregon.

19. Bruce Gray, Fact Witness

Mr. Gray will testify:

- He is the owner of plaintiff Grayguns, Inc., a federally licensed firearm dealer located in Douglas County which sells firearms in Oregon equipped with magazines with a capacity in excess of ten rounds, as well as standalone magazines with a capacity in excess of ten rounds.
- That Grayguns intends to continue selling these magazines and firearms equipped with them but will be forced to cease its activity if and when Measure 114 goes into effect.
- That he is a member of Second Amendment Foundation, Inc. and Firearms Policy Coalition.
- He will testify as to the recent sales by Grayguns, Inc. in Oregon of weapons with and without magazines with a capacity in excess of ten rounds.
- He will testify that business sales will be adversely impacted if and when Measure 114 is fully implemented.

20. Jessica Harris, Fact Witness

Ms. Harris will testify that

- She is an owner of plaintiff G4 Archery, LLC, a federally licensed firearm dealer located in Douglas County which sells firearms in Oregon equipped with magazines with a capacity in excess of ten rounds, as well as standalone magazines with a capacity in excess of ten rounds.
- That G4 Archery intends to continue selling these magazines and firearms equipped with them but will be forced to cease its activity and lose revenues if and when Measure 114 goes into effect.
- She will also testify that she is a member of Second Amendment Foundation, Inc. and Firearms Policy Coalition
- She will testify as to the recent sales by G4 Archery, LLC, in Oregon of weapons with and without magazines with a capacity in excess of ten rounds.

21. Matt French (for Plaintiff Sportsman's Warehouse, Inc.), Fact Witness

Mr. French will testify:

- He is the Vice President, Compliance, of plaintiff Sportsman's Warehouse, Inc., a publicly-traded company, with retail locations in Multnomah, Washington, Jackson, Douglas, Marion, Deschutes, Linn, and Klamath Counties.
- That each Sportsman's location in Oregon is a federally licensed firearm dealer, and will lose revenues if and when Measure 114 goes into effect.
- He will also testify concerning Sportman's recent sales in Oregon of weapons with and without a capacity in excess of ten rounds.

22. Alan Gottlieb (for Plaintiff Second Amendment Foundation), Fact Witness

Mr. Gottlieb will testify:

- He is the Executive Vice President of plaintiff Second Amendment Foundation, a 501(c)(3) nonprofit educational foundation incorporated under the laws of Washington with its principal place of business in Bellevue, Washington.
- He will testify concerning SAF's purpose to preserve the effectiveness of the Second Amendment through education, research, publishing and legal action programs.
- He will testify that this lawsuit is germane to SAF's purpose.

23. Brandon Combs (for Plaintiff Firearms Policy Coalition, Inc.), Fact Witness

Mr. Combs will testify:

- He is the President of plaintiff Firearms Policy Coalition, Inc. ("FPC"), a 501(c)(4) non-profit organization incorporated under the laws of Delaware with its principal place of business in Sacramento, California.
- He will testify concerning FPC's purposes to promote individual liberties, including Second Amendment rights, through research, advocacy, education and litigation on behalf of members
- He will testify that this lawsuit is germane to FPC's purposes.

Expert Witnesses

Plaintiffs intend to call the following expert witnesses, all of whom provided reports earlier in this case. Those reports contain a substantive summary of their anticipated testimony. These experts

may rely upon and discuss any of the documents identified in those reports, at depositions, or in Plaintiffs' Trial Exhibit List, filed concurrently.

- Massad Ayoob
- Clayton Cramer
- Matthew French
- Mark Hanish
- Ashley Hlebinsky
- Gary Kleck
- Michael Carrick

Exhibit Foundation Witnesses

If needed, Plaintiffs intend to call the following witnesses for the sole purpose of laying an evidentiary foundation for the admission of trial exhibits. If Defendants enter into appropriate stipulations regarding trial exhibits, then Plaintiffs will not need to call them. If Plaintiffs must call them as exhibit foundation witnesses, Plaintiffs will seek permission from the Court to take their testimony by remote means.

- David Kopel
- Philip J. Cook
- Jens Ludwig
- Clayton Cramer (in addition to expert testimony)
- William English
- Massad Ayoob (in addition to expert testimony)
- Gary Kleck (in addition to expert testimony)

- John Malloy
- Louis A. Garavaglia
- Joseph Bilby
- Aaron Karp
- Paul Kirchner
- Nathan Kozuskanich
- Jim Supica
- Doug Wicklund
- Philip Schreier
- Lewis Winant
- Philip Massaro
- Patrick Sweeney

DATED: May 15, 2023

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ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2023, I have made service of the foregoing **PLAINTIFFS' WITNESS LIST** of the party listed below in the manner indicated:

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